

ARKANSAS COURT OF APPEALS
ROAF, JUDGE ANDREE
NOT PUBLISHED

DIVISION IV

CA05-1251

October 4, 2006

JEREMY HUGHES
JULIE COOPER

APPELLANTS

v.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

APPEAL FROM POPE COUNTY
CIRCUIT COURT, JUVENILE DIVISION
[NO. J-2004-73, J-2004-242]

HONORABLE KEN D. COKER JR.,
CIRCUIT JUDGE

AFFIRMED

This is a no-merit appeal from a termination of parental rights. Counsel for appellants Jeremy Hughes and Julie Cooper has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 4-3(j)(2). We affirm the trial court's termination of Hughes's and Cooper's parental rights.

Because this is a no-merit appeal, only a brief recitation of the event that led to the minor children's removal from the home is necessary. Hughes and Cooper are the father and mother of H.H., born December 23, 2003, and C.H., born November 18, 2002. On November 20, 2002, appellee Arkansas Department of Human Services (ADHS) exercised a seventy-two hour hold on C.H. and removed him from Hughes's and Cooper's home because of their drug use. C.H. tested

positive at birth for amphetamines. The case progressed, and C.H. was ultimately placed in the permanent custody of his paternal grandmother because of Cooper's and Hughes's noncompliance in the dependency-neglect case. C.H. returned to ADHS custody in September 2004, when his grandmother was no longer able to care for him. C.H. was never in Cooper's and Hughes's custody.

On March 22, 2004, ADHS exercised a seventy-two hour hold on H.H. and removed her from Cooper's and Hughes's home. H.H. was removed from the home because of Cooper's and Hughes's admitted abuse of prescription and illegal drugs. The termination hearing in this case was held on June 10, 2005. Neither Cooper nor Hughes appeared at the termination hearing despite their having received notice in this case. At the time of the hearing, Cooper had warrants out for her arrest. Cooper's and Hughes's attorney moved for a continuance to ascertain their whereabouts, and the trial court denied the motion.

At the termination hearing, Hughes's mother testified that Hughes and Cooper were both addicted to drugs and that she would be "very concerned if the children had contact with [Hughes] or [Cooper]." A DHS caseworker testified that both Hughes and Cooper had only minimally complied with the case plan.

The trial court found that DHS had proven four grounds for termination: (1) that C.H. and H.H. had been adjudicated by the court to be dependent-neglected, and have continued out of the parental home of the parents for twelve months, and despite a meaningful effort by ADHS to rehabilitate the home and correct the conditions which caused removal, those conditions have not been remedied by the parents; (2) that C.H. and H.H. have lived outside the home of the parents for a period of twelve months and that the parents have willfully failed to provide significant material support in accordance with their means or maintained meaningful contact with C.H. and H.H.; (3) that the parents have abandoned C.H. and H.H.; (4) that subsequent to the filing of the original

petition for dependency-neglect, other factors or issues have arisen, which demonstrate return of C.H. and H.H. to the parents is contrary to C.H.'s and H.H.'s health, safety, or welfare and that despite the offer of appropriate family services, the parents have manifested incapacity or indifference to remedy the subsequent issues or factors or to rehabilitate their circumstances that prevent the return of C.H. and H.H. to the parents. The denial of the motion for continuance is the sole adverse ruling resulting from the termination hearing in addition to the trial court's ultimate decision to terminate.

In *Linker-Flores*, *supra*, our supreme court stated as follows:

[A]ppointed counsel for an indigent parent on a first appeal from an order terminating parental rights may petition this court to withdraw as counsel if, after a conscientious review of the record, counsel can find no issue of arguable merit for appeal. Counsel's petition must be accompanied by a brief discussing any arguably meritorious issue for appeal. The indigent parent must be provided with a copy of the brief and notified of his or her right to file points for reversal within thirty days.

If this court determines, after a full examination of the record, that the appeal is frivolous, the court may grant counsel's motion to withdraw and affirm the trial court's decision. *See Smith v. Ark. Dep't of Human Servs.*, ___ Ark. App. ___, ___ S.W.3d ___ (Dec. 7, 2005). The supreme court has explained that our review of adverse rulings in no-merit termination-of-parental-rights cases is limited to the termination hearing. *Lewis v. Ark. Dep't of Human Servs.*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 17, 2005). However, when the trial court has taken the prior record into consideration in its decision, a "conscientious review of the record" requires the appellate court to review all pleadings and testimony in the case on the question of the sufficiency of the evidence supporting the decision to terminate. *Id.* In this case, there were two adverse rulings: the trial court's decision to terminate Hughes's and Cooper's parental rights and its decision to deny their counsel's request for a continuance.

Our standard of review in termination-of-parental rights cases is well-settled. In *Johnson v. Arkansas Department of Human Services*, 78 Ark. App. 112, 119, 82 S.W.3d 183, 187 (2002), the court wrote:

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party to terminate the relationship. Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. The facts warranting termination of parental rights must be proven by clear and convincing evidence, and in reviewing the trial court's evaluation of the evidence, we will not reverse unless the court's finding of clear and convincing evidence is clearly erroneous. Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. In resolving the clearly erroneous questions, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. Additionally, we have noted that in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations.

An order forever terminating parental rights must be based upon clear and convincing evidence that the termination is in the best interests of the child, taking into consideration the likelihood that the child will be adopted and the potential harm caused by continuing contact with the parent. In addition to determining the best interests of the child, the court must find clear and convincing evidence that the circumstances exist that, according to the statute, justify terminating parental rights. (Citations omitted.)

Arkansas Code Annotated section 9-27-341 (Supp. 2005) states:

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

....

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(I) The likelihood that the juvenile will be adopted if the termination petition is granted; and
(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by continuing contact with the parent, parents, or putative parent or parents, and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

....

(iv) A parent has abandoned the juvenile;

....

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

In the present case, the trial court found that DHS had proven four grounds for termination listed in Ark. Code Ann. § 9-27-341(b)(3)(B) and that termination was in C.H.'s and H.H.'s best interests. Based upon our review of the record, the trial court's findings in this regard are supported by the record and constitute more than clear and convincing evidence warranting termination. An appeal on the merits of this case would indeed be wholly frivolous.

With regard to the adverse ruling that occurred at the termination hearing, a trial court shall grant a motion for continuance only upon a showing of good cause. *Smith, supra*. The granting or denial of a motion for continuance is within the sound discretion of the trial court, and that court's decision will not be reversed absent an abuse of discretion amounting to a denial of justice. *Id.* An appellant must show prejudice from the denial of a motion for continuance. *Id.* Here, Hughes's and Cooper's attorney asked for a continuance so he could ascertain their whereabouts because they did not show up for the termination hearing. Both Hughes and Cooper had received notice of the hearing. The trial court even noted that both parents had been at the courthouse the day before the

hearing. The trial court therefore did not abuse its discretion when it denied the motion for continuance, and this is not a meritorious ground for appeal.

Finally, Cooper has filed what purports to be points for reversal in the form of a letter to her attorney. Her letter advised that Hughes was out of prison, that she expected to be out of prison in approximately two months, and prayed that they be given another chance to gain custody of the children. Cooper does not raise any issue in her letter that would provide a basis for a meritorious appeal. Accordingly, counsel's motion to withdraw is granted, and the trial court's order terminating parental rights is affirmed.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.